IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Writ Petition No.1474 of 2006

Shri Rafique A. Malik. .. .. Petitioner
v/s.
The Chief Commissioner of
Income tax & ors. .. .. Respondents

W I T H

Writ Petition No.1475 of 2006

Rafique A. Malik. .. .. Petitioner
v/s.
The Chief Commissioner of
Income tax (Central) & ors. .. Respondents

W I T H

Writ Petition No.1476 of 2006

Aziza Rafique Malik. .. .. Petitioner
v/s.
The Chief Commissioner of Income-tax
(Central) & ors. .. .. Respondents

Mr.F.V.Irani with Mr.A.K.Jasani for petitioners.

Mr.A.M. Kotangale with Mr.S.R.Chauhan for respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 8th August 2006

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Rule. Rule is made returnable forthwith. A reply has been filed on behalf of the respondents and we have looked into it.

2. We have heard the learned Counsel for the parties.

3. The petitioner in Writ Petition No.1474 of 2006 is the son of late Smt.Malek Sultan Abdul Tejani. His daughter named Aziza has filed Writ Petition No.1476 of 2006 whereas Writ Petition No.1475 of 2006 is filed by Rafique A. Malik as the trustee of the estate of his deceased father. All these three Petitions seek to challenge the three orders all dated 24th May 2005 passed by the Chief Commissioner of Income Tax (Central) declining to grant waiver of the interest claimed by the Department under Sections 234A, 234B, 234C and 220(2) of the Income Tax Act, 1961. All these three matters are concerning the Assessment year 1996-1997 and it is not disputed that there was some delay to the extent of about nine months to one year in filing the return and/or paying the advance tax. Consequently the interest has been levied on all these three assessees.

4. It is material to note that the assessees are having an interest in the business known as Metro Shoes and it is the case of all the assesses that Rafique Malik was implicated in a controversy known as Shoes Scam. He was taken in custody as also his books of accounts by the CID. It is because of these circumstances beyond the control

of the parties concerned that the return could not be filed and the advance tax could not be paid. It is also their case that the same plea was raised by their mother Malek Sultan Tejani and in her case she was granted full waiver. In fact the order passed in her case clearly mentions the fact of arrest of her son and her husband and that the entire business operations landed into difficulty.

5. Mr.Irani, learned Counsel appearing for the petitioners, submits that the treatment given to the mother should be extended to the son, grand-daughter as well as her husband. In this behalf, he has relied upon a judgment of the Division Bench of Punjab and Haryana High Court in the case of **Mohd. Yousuf & anr. vs. Commissioner of Income-tax & anr. reported in 235 ITR page 329** which lays down that where the circumstances of the cases of the two petitioners, who were partners and brothers, were similar, there was no justification to adopt two different courses in the case of two brothers.

6. Mr.Kontangale, learned Counsel appearing for the Revenue, on the other hand, submits that what happened in the case of the mother cannot apply to the son or to her husband who are

in-charge of the business and there is no reason for them not to follow the requirements of law. In any case, Mr.Irani alternatively submits that there is a case for reconsideration and, therefore, the Chief Commissioner may be directed to look into the waiver applications afresh in the light of the Punjab and Haryana High Court judgment in Mohd. Yousuf's case (supra). Mr.Kontangale states that this course may be adopted, provided the amount of interest levied is paid by the petitioners in the meanwhile.

7. Mr.Irani has taken instructions and states that without prejudice to the submissions of the petitioners, they will deposit the requisite amount with the concerned Section of the Revenue. This will, of course, be subject to any adjustment to which the petitioners are entitled or which they have already been granted.

8. In the light of the aforesaid judgment and in the background of the fact that the mother of Rafique has been granted the waiver, we set aside the impugned orders all dated 24th May 2005 passed by the Chief Commissioner of Income-tax (Central) in the above three matters and restore the Waiver Applications to the file of the Chief Commissioner

to examine the submissions of the petitioners afresh.

9. Accordingly, Rule is made absolute. No order as to costs.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)